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and the Proposed Class

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

DAVID ALMEIDA, individually
and on behalf of all others similarly
situated,

Plaintiff,

vs.

GOOGLE, INC., a Delaware
Corporation; and DOES 1 through
10, inclusive,

Defendants.

CASE NO. CV 08-02088 RMW

JOINT RULE 26(F) REPORT

Initial Status Conference

Date: August 15, 2008

Time: 10:30 a.m.

Before: Honorable Ronald M. Whyte

JOINT RULE 26(F) REPORT

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Plaintiff David Almeida (“Plaintiff”) and Defendant Google Inc. (“Defendant” or “Google”) hereby jointly submit this Rule 26(f) Report. The parties met and conferred on July 25, 2008, pursuant to Rule 26 of the Federal Rules of Civil Procedure. During this

1 meeting, they discussed Rule 26 initial disclosures and discovery. This Joint Report
2 was prepared based on those discussions.

3
4 **A. PLAINTIFF’S STATEMENT OF THE CASE**

5 Plaintiff brings this class action against Google Inc. (“Google”) to recover
6 damages and other relief available at law and in equity on behalf of himself as well
7 as on behalf of the members of the following class:

8 *All persons or entities located within the United States*
9 *who bid on a keyword through AdWords, left the “CPC*
10 *content bid” input blank, and were charged for content*
11 *ads.*

12 The Complaint alleges misrepresentations related to Google’s AdWords
13 online advertising program when it fails to notify potential advertisers that leaving
14 the supposedly optional “CPC content bid” input blank on the signup webpage will
15 result in charges for ads on the “content network.” Unlike the ads placed on
16 Google’s web search results, ads on the “content network” are placed on less
17 desirable third party websites. Many online advertisers do not want their ads on
18 third party websites and therefore chose to leave the optional “CPC content bid”
19 box empty, not realizing that this would automatically generate bids for ads on third
20 party websites.

21 By tricking advertisers who seek on-line advertising through Google’s
22 AdWords program into bidding for a service that they do not want, Google is
23 causing damage to the class in an amount equal to the charges generated from the
24 unwanted ads displayed on the “content network”. Plaintiff brings the following
25 three causes of action: (1) unjust enrichment; (2) fraudulent concealment; (3) and
26 violation of California Business & Professions Code Section 17200, et seq.

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B. GOOGLE’S STATEMENT OF THE CASE

Google denies Plaintiff’s allegations. In particular, and without limitation, Google denies that its AdWords program was confusing as alleged by Plaintiff. Google further contends that it complied with all applicable regulations and statutes. Its conduct was neither unfair nor unlawful. Additionally, Google contends that this case is inappropriate for class-action treatment. Google will raise additional defenses after it has had the opportunity to learn the basis for Plaintiff’s claims.

C. RULE 26 INITIAL DISCLOSURES

Plaintiff made the initial disclosures required by Rule 26 on August 8, 2008. The parties have agreed that Defendant Google will serve its Rule 26 initial disclosures no later than September 15, 2008.

D. DISCOVERY SUBJECTS, COMPLETION AND PHASING

The parties anticipate discovery may be needed concerning: (1) issues of class certification (including, numerosity, adequacy, typicality and commonality); (2) the identity of all AdWords customers who left the “CPC content bid” input blank; (3) the design and/or testing of the AdWords bidding process; (4) the marketing of the AdWords program; (5) disclosures made concerning the bidding process for AdWords; and (6) damages. By identifying these categories, the parties do not concede that all such information is discoverable or necessary.

The parties propose the following discovery schedule:

November 2, 2009	Non-expert discovery cut-off
November 9, 2009	Expert opening reports
November 23, 2009	Expert opposition reports
December 7, 2009	Expert reply reports

1 December 14, 2009 Expert discovery cut-off

2 The parties do not believe that an order phasing or limiting discovery upon
3 particular issues is necessary.

4
5 **E. DISCOVERY OF ELECTRONICALLY STORED INFORMATION**

6 The parties have agreed to serve all filings in this action by electronic mail
7 (by .pdf, .tif, or Word format) if the service, including attachments, consists of 200
8 or fewer pages. For service of larger filings, the parties may effect service by
9 overnight mail, as long as courtesy copies of the operative pleading, motion, or
10 discovery response are served electronically on the same date. The parties agree
11 that Google may effect electronic service of documents in this action by serving the
12 following attorneys of record for Plaintiffs: Richard L. Kellner
13 (rlk@kbklawyers.com), and Alfredo Torrijos (at@kbklawyers.com). The parties
14 further agree that Plaintiff may effect electronic service of documents in this action
15 by serving the following attorneys of record for Google: David J. Silbert
16 (dsilbert@kvn.com) and Alyse Bertenthal (abertenthal@kvn.com).

17 Additionally, the parties anticipate that discovery in this case will involve the
18 production of documents and electronically stored information (“ESI”). The parties
19 agree to meet and confer in good faith in an effort to avoid the need for any formal
20 motions related to discovery of documents or ESI.

21
22 **F. ISSUES RELATING TO CLAIMS OF PRIVILEGE**

23 Discovery in this action may involve trade secrets. During the meet and
24 confer on July 25, 2008, the parties agreed to negotiate a stipulated Protective Order
25 that will govern the production of confidential materials (including documents and
26 other information) in this action. The parties agree to meet and confer in good faith
27 in an effort to reach agreement concerning the contents of an appropriate protective
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1 order.

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3 **G. CHANGES TO LIMITATIONS ON DISCOVERY**

4 The parties have agreed to change the limit on depositions made by
5 F.R.Civ.P. 30(a)(2)(A)(i) from a maximum of ten depositions to an equivalent
6 maximum hourly quota of 70 hours to be used at the discretion of each party.
7

8 **H. PROPOSED CLASS CERTIFICATION BRIEFING SCHEDULE**

9 The parties stipulate and agree, and request that the Court approve, the
10 following briefing schedule for Plaintiff's anticipated motion for class certification:
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12 April 3, 2009	Last day for Plaintiff to file and serve: (1) expert report(s) 13 on class certification; and (2) motion for class certification.
14 May 8, 2009	Last day for Defendant to file and serve: (1) expert 15 report(s) on class certification; and (2) opposition to 16 motion for class certification.
17 May 22, 2009	Last day for Plaintiff to file and serve reply in support of 18 motion for class certification.
19 June 19, 2009	Hearing on motion for class certification.

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I. ALTERNATIVE DISPUTE RESOLUTION

The Court has ordered mediation as the ADR process. The parties request that the Court extend the presumptive deadline for mediation until they have conducted substantial discovery. The parties agree to hold mediation by June 9, 2009.

DATED: August 8, 2008 By: _____/s/_____

KABATECK BROWN KELLNER LLP
Brian S. Kabateck
Richard L. Kellner
Alfredo Torrijos
Counsel for Plaintiff and the proposed class

DATED: August 8, 2008 By: _____/s/_____

KEKER AND VAN NEST LLP
Daralyn J. Durie
David J. Silbert
Ryan M. Kent
Alyse D. Bertenthal
Counsel for Defendant Google Inc.

